

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COPY

UNITED STATES TELECOM ASSOCIATION

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,  
and UNITED STATES OF AMERICA,

Respondents.

No. 00-1428

**RECEIVED**

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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**MOTION OF PETITIONER TO HAVE THE COURT REQUIRE  
THE FCC TO SUBMIT A MORE DETAILED STATUS REPORT**

The United States Telecom Association ("USTA"), petitioner, respectfully requests that the Court require the Federal Communications Commission (the "FCC") to provide a more detailed and responsive status report with regard to the reconsideration proceeding of the underlying FCC action. The petition for review was filed nearly two years ago, but has been held in abeyance at the FCC's request pending completion of action on the reconsideration petitions (Per Curiam Order, Docket No. 00-1428, January 19, 2001). That Court Order also indicated that it was without prejudice to a motion to return the petition for review to active status if the FCC fails to act expeditiously on the reconsideration petitions.

In granting the FCC's motion to hold the case in abeyance, the Court required the FCC to file monthly status reports. The FCC has now filed nineteen such reports, and none of them provide any indication as to how quickly the FCC will resolve the reconsideration proceeding. The most recent report, filed on August 28, 2002, merely recites that "The Commission Staff is

taking steps to complete work on the reconsideration petitions pending before the agency. The Commission will promptly inform the Court and the parties when the agency acts on reconsideration.”

The record before the FCC closed with the filing of Reply Comments on September 28, 2000 – some two years ago. Thus, the FCC should have completed its reconsideration or have a definite schedule for its completion. The unexplained, inordinate delay by the FCC in concluding its reconsideration compels petitioner to request the Court’s intervention. Petitioner asks the Court to require the Commission to specify in its next status report (1) what steps, if any, remain to be completed by the FCC; (2) what resources, if any, have been assigned to complete those steps; and (3) when the reconsideration will be completed. If, as the FCC claims, it is “taking steps to complete its work,” it can readily identify when it will complete any remaining tasks.

Absent a definitive statement by the FCC as to when it will resolve the reconsideration, the Court should immediately return this proceeding to the active docket. By failing to act, the FCC is preventing judicial review of its declaratory ruling, to the prejudice of petitioner. The two-year delay to date has already precluded the implementation by state public service commissions of effective policies concerning certification of telecommunications carriers for universal service funding and local competition, to the detriment of USTA’s members. Thus, at

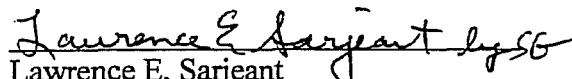
the very least, this Court should require the FCC to commit to a reasonable date certain for final action on all pending reconsideration petitions.

Respectfully submitted,



Stephen L. Goodman  
HALPRIN TEMPLE  
555 12<sup>th</sup> Street, N.W.  
Suite 950 North  
Washington, DC 20004  
(202) 371-9100

*Counsel for Petitioner  
United States Telecom Association*



Lawrence E. Sarjeant  
UNITED STATES TELECOM  
ASSOCIATION  
1401 H Street, N.W. Suite 600  
Washington, DC 20005  
(202) 326-7300

*Counsel for Petitioner  
United States Telecom Association*

Dated: September 26, 2002

## CERTIFICATE OF SERVICE

I, Stephen L. Goodman, hereby certify that the foregoing Motion was served this 26<sup>th</sup> day of September, 2002, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

John E. Ingle  
Deputy Associate General Counsel  
Federal Communication Commission  
445 12<sup>th</sup> Street, SW, 8C-755  
Washington, DC 20005

Lisa E. Boehley  
Counsel  
Federal Communication Commission  
445 12<sup>th</sup> Street, SW, 8c-755  
Washington, DC 20005

John B. Adams  
Kraskin, Lesse & Cosson  
2120 L Street, NW  
Suite 520  
Washington, DC 20037  
*Counsel For: Project Telephone Co., Inc.*

Richard D. Coit  
So. Dakota Indep. Tele. Coalition  
207 East Capitol, Suite 206  
P.O. Box 57  
Pierre, SD 57501  
*Counsel For: South Dakota Independent  
Telephone Coalition, Inc.*

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
*Counsel For: South Dakota Independent  
Telephone Coalition, Inc.*

Michael F. Altschul  
Cellular Telecommunications Industry Assoc.  
1250 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036  
*Counsel For: Cellular Telecommunications  
Industry Assn.*

Gene DeJordy  
Western Wireless Corp., Suite 100  
2001 N.W. Sammamish Road  
Issaquah, WA 98027  
*Counsel For: Western Wireless Corporation*


Nancy C. Garrison  
U.S. Dept of Justice  
Antitrust Div., Appellate Section, Room 10535  
Patrick Henry Bldg., 601 D Street, NW  
Washington, DC 20530  
*Counsel for USA*

James Bradford Ramsay  
NARUC  
1101 Vermont Avenue, N.W., Suite 200  
Washington, DC 20005  
*Counsel for: National Ass'n of Regulatory  
Utility Comm'rs*

David L. Sieradzki  
Hogan & Hartson L.L.P.  
555 Thirteenth Street, NW  
Washington, DC 20004  
*Counsel For: Western Wireless Corporation*

L. Andrew Tollin  
Wilkinson Barker Knauer, LLP  
2300 N Street, N.W.  
Suite 700  
Washington, DC 20037  
*Counsel For: Dobson Communications  
Corporation*

Rolayne Ailts Wiest  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501  
*Counsel For: South Dakota Public Utilities  
Commission*

  
Stephen L. Goodman